

No. 83-147

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1983

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

-vs-

WILLIE RAINGE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE APPELLATE COURT OF ILLINOIS

RESPONDENT'S BRIEF IN OPPOSITION

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RESPONDENT'S BRIEF IN OPPOSITION

The respondent, Willie Rainge, respectfully requests this Court to deny the petition for a writ of certiorari seeking review of the judgment of the Illinois Appellate Court, First District, in this case.

OPINIONS BELOW

The opinion of the Illinois Appellate Court, First District, reversing respondent's conviction and remanding his case for a new trial is reported as People v. Rainge, 112 Ill. App. 3d 396, 445 N.E. 2d 535 (1st Dist., 1983) and is reproduced in Appendix A of the petition for a writ of certiorari.

The judgment of the Illinois Appellate Court was based upon the decision of the Supreme Court of Illinois in the appeal of respondent's co-defendant Dennis Williams. That decision is reported as People v. Williams, 93 Ill. 2d 309, 444 N.E. 2d 136 (1982) and is reproduced in

Appendix A of the State's petition for a writ of certiorari in Illinois v. Williams, No. 82-1691.

JURISDICTION

Petitioner seeks to invoke this Court's jurisdiction under 28 U.S.C. Section 1257(3). As shown in the opinion of the Illinois Supreme Court, the judgment below is not based on the federal constitution but instead rests entirely upon state grounds, and this Court therefore lacks jurisdiction to grant the writ.

REASONS FOR DENYING THE WRIT

1. NO FEDERAL QUESTION IS PRESENTED AS THE DECISION BELOW IS NOT BASED UPON THE SIXTH AMENDMENT BUT INSTEAD RESTS SOLELY UPON STATE GROUNDS.

The petitioner acknowledges that the Illinois Appellate Court's reversal of respondent's convictions was based entirely on the decision of the Illinois Supreme Court in the case of co-defendant Dennis Williams, and petitioner has adopted the arguments presented in its petition for a writ of certiorari in the Williams' case as reasons for granting the writ here. (Pet., p. 4) This response will therefore be addressed to the decision in People v. Williams and to the State's petition seeking review of that decision.

All of the reasons advanced by the petitioner for granting certiorari are premised on the assumption that the judgment below was based on a finding by the Illinois Supreme Court that respondent Williams was denied his Sixth Amendment right to the effective assistance of counsel. (Williams Pet., p. 6-13) This assumption is unfounded. Although the factor underlying the decision of the Illinois Supreme Court was unquestionably its doubts concerning the adequacy of defense counsel's representation, its judgment was not predicated upon an application of Sixth Amendment requirements. To the contrary, the court expressly concluded that a denial of the Sixth Amendment right to the effective assistance of counsel had not been established and relied instead upon its inherent power under state law to order a new trial in the interests of justice. (Williams Pet., p. 14a)

The petitioner addresses this fundamental jurisdictional question as an afterthought and asserts only that "...the opinion of the Illinois Supreme Court in this case indicates that its decision was based on federal constitutional law." (Williams Pet., p. 12) This equivocal claim rests on the court's statement that "...we can no longer say, with any degree of assurance, that Williams received the effective assistance of counsel

guaranteed by the Constitution." (Williams Pet., p. 12, 12a) This statement, however, is not a holding that a Sixth Amendment violation was established nor does it constitute the basis of the court's judgment.

The specific ground upon which the Illinois Supreme Court based its judgment is stated in the penultimate paragraph of its opinion:

It is apparent to us that the unique facts in this case require that we forgo application of either of the established tests, normally applied in determining whether a defendant has been deprived of his constitutional right to the assistance of counsel. (See, e.g., People v. Lewis (1981), 88 Ill. 2d 129, 153-54 (appointed counsel); People v. Murphy (1978), 72 Ill. 2d 421, 436 (retained counsel).) As we originally indicated, the voluminous record here shows that there were many instances where counsel made able and vigorous objections and presentations, and we cannot characterize his performance as actual incompetence or as of such a low caliber as to reduce the trial to a farce or sham. We believe, however, considering the unique circumstances and sequence of events in this capital case, which will rarely, if ever, be duplicated, that the interests of justice require that Dennis Williams be granted a new trial.

(Williams Pet., p. 14a)

This passage demonstrates that the court did not reverse due to a perceived violation of the Sixth Amendment, as the court in fact concluded that it was unable to find that such a violation was shown under the standards it recognizes for adjudicating ineffective assistance of counsel claims. Instead, the court reversed based on its belief that all of the unique circumstances bearing upon Mr. Weston's performance, while not sufficient to establish a Sixth Amendment violation, raised such serious doubts about the integrity of the trial as to preclude affirmance. Thus, it was the interests of justice, not the Sixth Amendment, which compelled the court to order a new trial.

In Illinois, reviewing courts in criminal cases have plenary authority to correct errors or defects affecting substantial rights and to order a new trial. Supreme Court Rule 615 (Ill. Rev. Stat., 1981, Ch. 110A, Section

615) Under this rule the Illinois Supreme Court has stated that "This court is empowered to do substantial justice in any case...", People v. Brownell, 79 Ill. 2d 508, 542, 404 N.E. 2d 181, 198 (1980), and that power is the basis of its judgment in the present case.

The Illinois Supreme Court was confronted with circumstances that it repeatedly emphasized were unique. (Williams Pet., p. 4a, 13a, 14a) Mr. Weston undertook to represent three defendants in a capital case, and over his vociferous objections that he was not prepared, (Tr p. 35-36, 40-45) he was forced to simultaneously defend his clients before two juries. Both before and during his representation of respondents, Mr. Weston was guilty of neglect and misconduct in another matter entrusted to him and was under investigation by the Illinois Attorney Registration and Disciplinary Commission. The commission recommended that he be disbarred for this and other misconduct, and upon review the Illinois Supreme Court agreed that this sanction was warranted. In re Weston, 92 Ill. 2d 431, 442 N.E. 2d 236 (1982). In light of the information disclosed in the disbarment proceedings, the court concluded that fundamental fairness required a reexamination of respondent's previously rejected claim that Mr. Weston's numerous omissions at trial established a denial of the effective assistance of counsel. Following rehearing, however, the court again concluded that the stringent standards for establishing such a Sixth Amendment claim had not been met. Nevertheless, because of the pervasive doubts concerning the fairness of respondent's trial which were raised by the unique and compelling facts in this most serious case, the court ordered a new trial and based this judgment upon its inherent authority under state law to see that substantial justice is done.

The power of this Court to review the decision of a state court is limited to cases in which the judgment below is based upon an application of federal law and does not extend to judgments resting upon an adequate and independent state law ground. Herb v. Pitcairn, 324 U.S. 117 (1945). In

the present case the Sixth Amendment issue raised by the petitioner played no part in the decision of the Illinois Supreme Court to order a new trial. In fact, as the court's opinion shows, the petitioner was the prevailing party with respect to this federal question. The judgment of the Illinois Supreme Court instead rests solely upon state grounds, independent of the requirements of the Sixth Amendment, and this Court lacks jurisdiction to review this judgment.

2. SHOULD THIS COURT CONCLUDE THAT ITS JURISDICTION HAS BEEN ESTABLISHED, REVIEW SHOULD BE DENIED FOR THE ADDITIONAL REASONS STATED IN RESPONDENT'S BRIEF IN OPPOSITION IN ILLINOIS V. WILLIAMS.

With respect to the merits of this case, respondent Willie Ränge hereby adopts the additional reasons for denying the writ argued in the brief in opposition filed on behalf of co-defendant Dennis Williams in Illinois v. Williams, No. 82-1691.

CONCLUSION

For the above reasons, the petition for a writ of certiorari to the Illinois Appellate Court should be denied.

Respectfully submitted,

STEVEN CLARK
Deputy Defender

MARTIN S. CARLSON
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COUNSEL FOR RESPONDENT

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PEOPLE OF THE STATE OF ILLINOIS,

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-vs-

WILLIE RAINGE,

Respondent.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Respondent Willie Rainge, by his attorney, Martin S. Carlson, Assistant Appellate Defender, Office of the State Appellate Defender, asks leave to file his Brief in Opposition and to proceed in forma pauperis pursuant to Rule 46. Counsel's affidavit in support of this motion is attached hereto.

Martin S. Carlson

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(312) 793-5472

COUNSEL FOR RESPONDENT

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1983

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

-vs-

WILLIE RAINGE,

Respondent.

AFFIDAVIT IN SUPPORT OF MOTION
TO PROCEED IN FORMA PAUPERIS

I, Martin S. Carlson, being first duly sworn on oath, in support of respondent's Motion for Leave to Proceed In Forma Pauperis, depose and say:

1. I am a member of the bar of this Court.
2. To my knowledge the respondent is a poor person and is unable to pay the costs of this proceeding or to give security therefor.
3. The respondent is presently held in custody in the Illinois Department of Corrections, Stateville Branch, Joliet, Illinois, and has been incarcerated there for the past four years.
4. Following his conviction and the imposition of sentence on February 6, 1979, the respondent was found to be indigent, and a judge of the Circuit Court of Cook County appointed the Office of the State Appellate Defender to represent him on appeal. (Copies of this order and the affidavit of indigency filed by respondent at that time are attached.)
5. Due to time constraints, I have not been able to secure an affidavit of the respondent to file with this motion. I will endeavor to

obtain and file respondent's affidavit in conformance with Rule 46.1 as soon as possible.

Mart. S. Carlson

MARTIN S. CARLSON
Assistant Appellate Defender

COUNSEL FOR RESPONDENT

SUBSCRIBED AND SWORN TO BEFORE ME
this 31st day of August, 1983.

Alicia M. Velasquez
NOTARY PUBLIC

IN THE CIRCUIT COURT OF COOK COUNTY
MUNICIPAL DEPARTMENT - SIXTH DISTRICT

PEOPLE OF THE STATE OF ILLINOIS

-vs-

Willie Rains

No. 78165186

No. _____

No. _____

Trial Judge: Dwight McKay

Court Reporter: Bob Madoch

Public Defender: _____

Branch 96 Date: 3-23-79

Appeal Bond: _____

NOTICE OF APPEAL

An appeal is taken from the order of the Court in Case No. Willie Rains vs. State of Illinois

Appellant's Name: IDOC

Appellant's Address: _____

Appellant's Attorney: JAMES J. DCHERTY, Public Defender of Cook County

Address: 407 Chicago Civic Center, Chicago, Illinois 60602

Offenses of which convicted: Aggravated Kidnapping, Rape

Date of Judgment or Order: 2-6-79

Date of Sentence: _____

Sentence: _____

Willie S. Rains

Defendant - Appellant

PETITION FOR REPORT OF PROCEEDINGS AND COMMON LAW RECORD AND OATH

Pursuant to Supreme Court Rule 605 through 608, the defendant, an indigent person, petition this Court to: (1) Order the Official Court Reporter to transcribe an original and copy of his notes, and file the original with the Clerk of this Court, and deliver a copy to the defendant; (2) Order the Clerk to prepare the record on appeal.

The Appellant, being sworn on oath, states that at the time of his conviction and at the time of filing this petition, he is without financial means to pay for the Report of Proceedings, and an attorney.

Willie S. Rains

Defendant-Appellant

SUBSCRIBED and sworn to before me this _____ day of _____, 19____

Notary Public or Deputy Clerk

ORDER

IT IS HEREBY ORDERED that the Public Defender of Cook County be appointed as counsel for the defendant on appeal and that the Report of Proceedings and Common Law Record be furnished to the defendant without cost, and the offenses herein be consolidated. The following dates are ordered as prescribed

DATED: _____

I acknowledge receipt: _____

Court Reporter: _____

DIRECTIONS

Please PRINT. Prepare a notice of appeal for each defendant. Prepare 4 copies: (1) Original for Court file; (2) Court Reporter; (3) Defendant; (4) P. D. file. Make certain clerk stamps original and all copies as FILED. Continue 30 days to the second or fourth Monday after the 30 days to Br. 96 for an appeal check in Markham at 1:30 p.m. Have Court Reporter sign the receipt above and have the Judge sign the original and the Court Reporter's copy. Attach ERROR ON APPEAL form to P. D.'s copy and mail both to P. D.'s office. Please Circle Municipal Ordinance case numbers.

FILED
SIXTH MUNICIPAL DISTRICT
OF CIRCUIT COURT COOK COUNTY

FEB 6 1979

PGC:ra7/1/79

William McKay
CLERK OF COURT

FILE
NEW 7-17

IN THE CIRCUIT COURT OF COOK COUNTY
SIXTH MUNICIPAL DISTRICT

The People of the State of Illinois,

Plaintiff,)

vs.)

NO. 78-I-6-5186

Charges: Aggravated Kidnapping

Rape, Machine

ED
SIXTH MUNICIPAL DISTRICT
OF COOK COUNTY, ILL.

Willie Range

Defendant)

AFFIDAVIT OF ASSETS AND LIABILITIES

FEB 6 1979

I, Willie Range defendant in this case, on oath state that I am without adequate assets to retain counsel, and that I make the following statement in support of my request to be represented by the Public Defender's office.

1. Name Willie Range Date of birth June 8, 1957
2. Address 1437 Center Lane Phone none
3. Family (a) Marital status Single (b) Number of Children none
- (c) Number of other dependents none and relationship none
4. Name and address of employer none
- Length of employment 5.7 months Occupation Hardy man
5. Earnings and sources of income:
 - (a) \$ 350.00 gross per month from employment
 - (b) \$ none per month from pension, trusts, annuity, welfare, Workman's Compensation, retirement or disability plan, or any similar State, Federal, local or private benefit plan.
 - (c) \$ none per month from rents, royalties, bonds, securities or interest
 - (d) \$ none per month from other sources enumerated herein
 - (e) \$ 350.00 per month from all sources.
6. Value of assets:
 - (a) Home or other dwelling \$ none
 - (b) Other real property \$ none Where situated none
 - (c) Car \$ 300.00 Make 69 Cal. 71 Vega Year 1969 + 1971 4 door
 - (d) Other personal property (jewelry, household contents, furs, etc.) \$ none
 - (e) Bank accounts \$ none
 - (f) Cash on hand \$ none
 - (g) Surrender value of life or annuity insurance policies \$ none
 - (h) Securities, trusts, bonds \$ none
 - (i) Other assets \$ none Described herein none
 - (j) Total value of assets \$ 300.00 - estimated value of automobile now in custody of authorities
7. Liabilities:
 - (a) Mortgage on home \$ none Monthly payment \$ none
 - (b) Rent per month \$ none - living with mother
 - (c) Amount owed on car \$ none To Whom none
 - Monthly payment none
 - (d) Personal debts \$ none - 138.00 To Whom Owed St. James Hospital
 - (e) Other debts \$ none To Whom Owed none
 - (f) Total liabilities and debts \$ 138.00
8. If released on bail, specify amount of security \$ N.A. and source of payment of security (defendant's funds, borrowed cash, etc.) none

I certify the foregoing is true to the best of my knowledge and belief.

Willie L. Range
Defendant

Subscribed and sworn to before me

Feb. 6 19 79

Dorothy Bentley
(Deputy) Clerk